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Dura. –08 Ys. 09 Ms. 27 Ds.

Exh. 132

IN THE COURT OF CIVIL JUDGE, JUNIOR DIVISION, KUDAL
(Presided over by Komalsing Rajput)

R.C.S. No. 44/2007

1. Smt. Anandibai Dattaram Sawant,
- *Since deceased through her*
Legal Representatives

1A. Smt. Mandakini Dattaram Sawant,
Age 50 yrs., Occu. - Household,
R/o.: C/o. Smt. Rohini Ramakant Chavan,
R. B. B. 12, Railway Colony, Station
road, Kalava (West),
Thane - 400 605.

1B. Sou. Sumati Dattatray Palav,
nee Damayanti Dattaram Sawant,
Age 47 yrs., Occu. - Household,
R/o.: Gundpali Gavthan, Patilwadi,
Divare chawl No. 79, near Highway,
Andheri (East), Mumbai No. 69.

1C. Satish Dattaram Sawant,
Age 42 yrs., Occu. - Agriculturist,
R/o.: Varde,
Tal. Kudal, Dist. Sindhudurg.

PLAINTIFFS

2. Satish Dattaram Sawant,
Age 36 yrs., Occu. - Agriculturist,
R/o.: Varde,
Tal. Kudal, Dist. Sindhudurg.

Vs.

1. Raghunath Shankar Sawant,
Age 55 yrs., Occu. - Service,
R/o.: 101, 604, Opalmoraj Residency,
Palya Bij Road, Sector 17,
Vashi (East), New Mumbai.

2. Anant Sonu Sawant,
*- Since deceased through his
Legal Representatives*

2A. Smt. Asmita Anant Sawant,
Age 68 yrs., Occu. - Retired,

2B. Ajay Anant Sawant,
Age 43 yrs., Occu. - Doctor,

2C. Vinay Anant Sawant,
Age 39 yrs., Occu. - Medical Store,

Def. Nos. 2A to 2C all are
R/o.: 1203/1204, Vikas Paradise,
Tower II, L. B. S. Road,
Mulund (West), Mumbai – 400 080.

3. Madhukar Sonu Sawant,
Since deceased through his

DEFENDANTS

Legal Representatives

Defendant Nos. 2A to 2C.

4. Pandurang Krishna Sawant,
Age 70 yrs., Occu. - Agriculturist,
R/o.: Varde,
Tal. Kudal, Dist. Sindhudurg.
5. Prasad Vijay Sawant,
Age 25 yrs., Occu. - Service,
R/o.: Avdhut Co-Operative Society,
Flat No. 50, Room No. 4,
Shivajinagar, Thane (West).
6. Mahesh Vijay Sawant,
Age 23 yrs., Occu. - Service,
R/o.: Avdhut Co-Operative Society,
Flat No. 50, Room No. 4,
Shivajinagar, Thane (West).
7. Smt. Vidya Vijay Sawant,
Age 60 yrs., Occu. - Household,
R/o.: Avdhut Co-Operative Society,
Flat No. 50, Room No. 4,
Shivajinagar, Thane (West).
8. Sadashiv Krishna Sawant,
Age 45 yrs., Occu. - Agriculturist,
R/o.: Varde,
Tal. Kudal, Dist. Sindhudurg.

9. Sanjay Krishna Sawant,
Age 45 yrs., Occu. - Service,
R/o.: New Sangam Society,
Room No.11, Garibacha Wada,
Shivajinagar, Mahatma Phule
Road, Dombivali (West),
Dist. Thane.

Advocates for the Parties –

Advocate for the plaintiffs - Shri. M. D. Kunte.
Advocate for the defendant Nos. 4 and 8 - Shri. S. S. Sawant.
Adv. for the defendant Nos.1 to 3, 5, 6, 7 and 9 - Ex parte.

JUDGMENT

(Delivered on 6th February 2016)

1. This is a suit for partition and separate possession.
2. As per plaintiffs the properties mentioned in Para. No.1 of the plaint vide Schedule A and B are owned and possessed by the joint family of plaintiffs and defendants. Their common ancestor Raghunath was survived by four sons, deceased Shankar, deceased Sonu, Krishna and deceased Dattaram. Plaintiffs are wife and son respectively of the fourth son deceased Dattaram. Other defendants are their legal heirs. As the properties were owned by the deceased Raghunath, being legal heirs of one of his son, plaintiffs are having 1/4th share in it. In the first week of April 2007, they demanded partition, but defendants refused to partition the suit properties and therefore they filed present suit.
3. Out of defendants, defendant Nos. 4 and 8 filed their written statement vide Exhibits 44 and 65 respectively. Their main objections to

the tenability of suit are firstly, the joint properties were already partitioned and share is allotted to plaintiffs since long back. Secondly, all the necessary parties and properties are not joined and last main ground of objection is conversion of plaintiff to Christianity. Other defendants remained absent and therefore matter was proceeded *ex parte* against them.

4. In view of adverse pleadings, one of my learned predecessor framed issues vide Exh.59. Plaintiff in support their case examined only one witness plaintiff No.2, Satish Dattaram Sawant, vide his evidence affidavit, Exh.62 and relied on certain documents. On behalf of contesting defendants one of the defendant Sadashiv Krishna Sawant vide Exh.111, led his oral evidence.

5. Heard both the sides at length. The plaintiff relied on the fact that the claim of jointness is not seriously disputed by the defendants. He also tried to show that there is nothing on record to dismiss the suit. Another aspect of his argument is an attempt to erase the statement made by plaintiff in his cross-examination regarding conversion. On the other hand for defendants it is submitted that suit is bad in the eyes of law for want of proof of nature of properties, non-joinder of parties to suit and properties. The valuation is also not correct. Considering pleadings, evidence on record and arguments, I recorded my findings on each of the issues as follows for the reasons discussed below -

| Sr. No. | ISSUES | FINDINGS |
|---------|--|----------------------------|
| 1. | Do plaintiffs prove that the suit properties are joint Hindu family properties of themselves and defendants? | ...In the negative. |

| | | |
|-----|--|---|
| 2. | Do defendant Nos. 4 and 8 prove that the suit properties are their self acquired properties? | ...In the negative. |
| 3. | Do plaintiffs prove that they have 1/4 th share in the suit properties? | ...In the negative. |
| 4. | Do defendant Nos. 4 and 8 prove that the plaintiffs have not properly valued the suit and not paid proper court-fee? | ...In the negative. |
| 5. | Do defendant Nos. 4 and 8 prove that the suit is bad for non-joinder of necessary party? | ...In the affirmative. |
| 6. | Whether the plaintiffs are entitled for partition and separate possession of their share in the suit properties? | ...In the negative. |
| 7. | Are defendant Nos. 4 and 8 entitled to compensatory costs? | ...In the negative. |
| 7A. | Does defendant No. 4 prove that plaintiffs are not entitled to share in suit properties due to accepting Christianity? | ...In the negative. |
| 8. | What order and decree? | ...The suit is dismissed with costs. |

REASONS

AS TO ISSUE NOS. 1 AND 2 – Nature of properties.

6. Both these issues framed are in conflicting form, on one hand issue No.1 casts burden on the plaintiff to prove the nature of properties and on

the other hand issue No.2 casts burden on defendants to prove that they are self acquired properties. In such a situation law needs to be looked into. Section 101 of Evidence Act, provides that one who alleges have to prove the contention raised by him. Therefore primarily the burden to prove the fact that the suit properties are joint family properties of both the parties and not self acquired properties of defendants lies on the plaintiffs. In this regard in oral evidence he deposed that suit properties are joint family properties. But in support of this oral evidence if we perused documents produced on record, he filed certified copies of 7/12 extracts and Grampanchayat property extract of the suit properties, Exhibits 6 to 11. The defendants denied the nature of suit properties stating that, these are tenanted properties only of defendant Krishna, the share in the properties is already allotted to the plaintiffs. The documentary evidence produced by plaintiffs simply suggests that those properties are standing in the name of both the parties. As defendants specifically denied there should be some additional material to draw the inference of jointness. It is well settled that revenue record is prepared only for fiscal purposes. There is no positive evidence on record to show that suit properties are joint family properties of plaintiffs and defendants. Regarding the self acquired properties as claimed by defendants also, parties failed to prove this fact. Therefore, I answered both these issues in the negative.

AS TO ISSUE NO. 5 – Non-joinder of necessary parties.

7. As per defendants all the necessary parties to the suit are not joined, therefore suit needs to be dismissed. In this regard they specifically pleaded that the sisters are not joined to the suit. If we perused cross-examination of the plaintiff he admitted that the sisters of defendant Nos. 1 and 2 are not joined in the suit. Same is the case with the daughters of

defendant No.8. Learned advocate for plaintiffs in this regard submitted that it does not make any difference as the person of whom they are legal heirs or on them interest is going to be devolved are already on record and share of them remains intact. Therefore suit is not bad for non-joinder of necessary parties. This argument however does not appearing sound. Being co-parceners the plaintiffs are duty bound to join them. Without hearing those persons the suit cannot be properly adjudicated upon. In addition to this if we perused plaint in Para. No. 6, plaintiffs themselves pleaded that one of the joint property and co-owners are not joined in the suit. This fact is fatal to the plaintiffs' case. Therefore as stated above the sisters and daughter are not joined. So also properties and the persons in whose name that property is standing are not joined. Hence I answered this issue in the affirmative.

AS TO ISSUE NO. 4 – Valuation.

8. Objections are raised by the defendants regarding valuation of suit properties. If we perused cross-examination of the plaintiff in this regard, he specifically admitted that the house property is under valued. But regarding another material particulars evidence is not on record as he is claiming only his share in the said property the material is not sufficient.

9. Regarding other properties also no evidence on record. Therefore defendants failed to prove this issue. Therefore, I answered this issue in the negative.

AS TO ISSUE NO. 7A – Conversion.

10. Much time is consumed during arguments on this point. The defendants pleaded that plaintiffs converted to Christianity and therefore no relief can be granted to them under Hindu Law. If we perused evidence of defendants rather than giving any positive proof of conversion tried to rely upon the admissions of plaintiffs in cross-examination, but those

admissions are not in strict sense of the term said to be admissions. Therefore no conclusion can be drawn on this basis. In addition to it if we perused cross-examination of the defendants he admitted that on one occasion he found plaintiff making prayer as per Christianity, therefore he drawn conclusion to that effect. Thus there is no evidence at all in proof of this issue and therefore, I answered this issue in the negative.

AS TO ISSUE NOS. 3, 6 AND 7 – Reliefs.

11. As the findings on issue Nos.1 and 5, are recorded against plaintiffs, they are not entitled to any of the reliefs claimed. So also defendants not made out any strong case to grant compensatory costs. Even if it is presumed that issue Nos.1 and 5, are recorded in favour of plaintiffs, they in Para. No. 6 of the plaint pleaded that one of the property is not joined in the suit. The law provides that in the suit for partition all the properties must be bring in common hotch potch. In absence of this compliance plaintiffs are not entitled to any relief. Therefore due to this basic infirmity no relief can be granted, hence I answered all these issues in the negative. Accordingly, following order -

ORDER

Suit is dismissed with costs.

Sd/-

KUDAL

(KOMALSING RAJPUT)

DATE – 06 /02 /2016

C.J.J.D., KUDAL, DIST. SINDHUDURG